IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.872 OF 2005
WITH
CIVIL APPLICATION NO.1091 OF 2005

Prakash J. Majethia & Anr. ...Appellants.
Vs.
Shri G. M. Shaiklh & Anr. ...Respondents.
....
Mr. M.M. Sathaye for the Appellants.
Mr. Girish Agarwal for the Respondents.
.....

CORAM : DR. D.Y. CHANDRACHUD, J.

December 5, 2005.

P.C.:

The dispute between the parties relates to the extent of the entitlement of the Respondents in respect of their holding Survey Nos. 430/2 and 360/2 at Mauje Bhagur, Taluka and District Nasik. The land falls within the limits of Deolali Cantonment Board. The contention of the Appellants is that the total area which is in the occupation of the Respondents as tenants is 440 sq.ft. On the other hand Counsel appearing on behalf of the Respondents pointed out that the total area in respect of which the Respondents have made a claim is 3675 sq.ft. inclusive of a house constructed

on the property. According to the Appellants, prior to the date of the suit, the unauthorised extension which was made by the Respondents, came to be demolished by the Deolali Cantonment Board. Parties agree that they shall maintain status quo as it obtains at present. It is also agreed that the Learned Trial Judge may be directed to appoint an appropriate person as a Commissioner to carry out a survey and to submit a report to the Learned Trial Judge. Accordingly, this appeal is disposed of by directing the Learned Trial Judge to appoint an appropriate person to act as a Commissioner to survey the holding and to submit a report on the nature of the construction which has been carried out by the Respondents and also to submit a report after surveying the site in regard to the extent of the possession of the Respondents. It would be open to the parties to apply before the Learned Trial Judge for further reliefs after the report is received. The Learned Trial Judge shall proceed to appoint a Commissioner within one week from the date on which a certified copy of this order is produced. The Commissioner shall complete the survey and submit report within a period of one week thereafter. It is, however, clarified that the order of status quo shall, in so far as the Appellants are concerned, not preclude the Appellants from

continuing construction in such part of the area of the aforesaid Survey numbers other than in respect of the property admeasuring 3675 sq.ft., that is claimed by the Respondents.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

....